

LAWRENCE G. TOWNSEND
Attorney at Law
455 MARKET STREET, 19TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

Telephone (415) 882-3288

Fax (415) 882-3299
email lgt@lgt-law.com

June 16, 2008

The Hon. James Ware
U.S. District Judge
U.S. District Court, Northern District of California
280 South First Street
Courtroom 8, Fourth Floor
San Jose, CA 95113

**Re: Corbis Corporation v. MobileToys, Inc.
USDC NDCal Action No. CV 07 5910 JW RS**

Dear Judge Ware:

I represent Defendant MobileToys, Inc. in this action. I am writing you about an issue of interpretation of your April 10, 2008 scheduling order as it relates to discovery. Simply put, the scheduling order adopted the parties' discovery plan. However, the parties did not come to terms on a discovery plan. Instead, the joint case management statement recited a disagreement in paragraph 17: "Plaintiff proposes that discovery commence after mediation (Defendant does not.)"

Defendant propounded written discovery that Plaintiff asserts is untimely or not authorized per the scheduling order, and Plaintiff therefore refuses to provide the discovery information. Defendant had sought the discovery to prepare for the upcoming mediation conference scheduled for July 25, 2008 before court-appointed mediator, John Crittenden. Defendant's view is that if the parties did not agree to a discovery plan, and the court did not order otherwise, the default time for commencing discovery controls. In this case, that would mean that discovery was authorized to commence after the rule 26(f) conference of counsel and in no event later than the issuance of the scheduling order on April 10, 2008. I have had one or more meet-and-confer conferences with opposing counsel in efforts to resolve this issue, but those efforts have been unsuccessful.

If the default discovery provisions are not applicable, then the parties are left with no commencement date for discovery—something that was clearly not intended. Accordingly, Defendant respectfully requests that the court issue an order clarifying that the discovery period commenced as of the date of the scheduling order on April 10, 2008 (the only discovery in this case having been propounded after the latter date).

The Hon. James Ware
June 16, 2008
Page 2

Thank you for your attention to this matter. A proposed order is submitted.

Respectfully submitted,



Lawrence G. Townsend

LGT/bcd
Attachment (Proposed) Order re Commencement of Discovery

S:\LGT-TENA\MobileToys\Ltr-JudgeWare 2008 0616.wpd